HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 637 of 2007

Between:

M/s Andhra Sugars Limited,
Venkatarayapuram, Tanuku.

... Appellant

And

Labour Court, Guntur, rep. by its Presiding Officer
and another.

... Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri V. Srinivas

Counsel for respondent No.2: Smt. D. Radha Rani

August 20, 2007

Per G.S. Singhvi, CJ

Feeling aggrieved by the interlocutory order passed by the learned Single Judge whereby he confirmed the ad-interim order dated 28.12.2005 passed in WPMP No.35526 of 2005 subject to the condition of payment of wages to respondent No.2 in terms of Section 17-B of the Industrial Disputes Act, 1947 (for short, 'the Act'), the

appellant has preferred this appeal under Clause 15 of the Letters Patent.

Respondent No.2 was engaged as a mazdoor in the employment of the appellant company. After he had worked for 30 years, the management of the company vide its letter dated 12.4.1999 informed respondent No.2 that resignation tendered by him on 16.3.1999 has been accepted. Respondent No.2 challenged the same by raising an industrial dispute under Section 2-A (2) of the Act, as amended by Andhra Pradesh Act No.32 of 1987.

In the statement of claim filed by him, respondent No.2 pleaded that on 17.3.1999, there was some incident at the time of unloading a lorry; that he and three others were called by the management and their signatures were obtained on blank papers; that they were not allowed to join duty with effect from 18.3.1999 and that on 30.4.1999, he came to know about his removal from service by way of acceptance of the alleged resignation.

In the counter filed by the management of the appellant, it was pleaded that respondent No.2 had voluntarily resigned on 16.3.1999 and his resignation was accepted on 12.4.1999.

The learned Presiding Officer of Labour Court, Guntur, after considering the pleadings and evidence of the parties, rejected the theory of voluntary resignation by respondent No.2 and held that the acceptance of the so-called resignation amounted to termination of his service. Accordingly, he passed award dated 29.6.2005 for reinstatement of respondent No.2 with consequential benefits.

The appellant challenged the award in Writ Petition No.27672 of 2005. While admitting the writ petition on 28.12.2005, the learned Single Judge passed an ex parte interim order in WPMP No.35526 of 2005 and stayed the award.

On notice, respondent No.2 filed WVMP. No.1043 of 2007 for vacating the interim order. The learned Single Judge partly allowed the application and modified the interim order by directing the writ petitioner (the appellant herein) to pay wages to respondent No.2 in terms of Section 17-B of the Act.

Shri V. Srinivas, learned counsel for the appellant relied on the judgment of the Supreme Court in **Uttaranchal Forest Development Corporation v. K.B. Singh**[1] and argued that the impugned order is liable to be set aside because the learned Single Judge did not consider the issue of applicability of Section 17-B of the Act in a correct perspective. He emphasized that respondent No.2 had not produced any evidence to prove that he was not gainfully employed and yet the learned Single Judge burdened the appellant with the liability to pay backwages in terms of Section 17-B.

In the context of the submission made by Shri V. Srinivas, we asked him to show whether the management of the appellant has produced any evidence before the Labour Court or this Court to establish the factum of gainful employment of respondent No.2. To this, the learned counsel replied in negative and reiterated that the burden to prove that he was not gainfully employed was on respondent No.2.

We have given serious thought to the arguments of the learned counsel, but have not felt persuaded to set aside the order under challenge. A perusal of the record shows that with a view to avoid compliance of Section 17-B, the management of the appellant company had pleaded that respondent No.2 is running a restaurant and a pan shop. In paragraphs 8 and 9 of the counter-affidavit filed by him, respondent No.2 categorically denied the appellant's assertion

that he was running a restaurant and a pan shop and averred that the condition of his family was extremely serious. For the sake of reference, these two paragraphs are reproduced below:

> " 8. The petitioner company has stated that it has reliably come to know that I am presently running a "Restaurant" and a "pan shop" independently. I submit that the above plea is a subterfuge and taken with a view to distraught and to deliberately avoid paying the backwages legitimately due to me. Thus, the petitioner company cannot simply say without any substantial recorded proof merely on surmises and conjectures that I am running a "restaurant" and a "pan shop" and thus without there being any evidence much less any proof of record, the contention of the petitioner company in this respect is a "misnomer" and totally unbelievable by any stretch of imagination.
> 9. I humbly submit this Hon'ble Court in WPMP No.35526 of 2005 in W.P.No.27672 of 2005 ha granted "interim stay" on 28.12.2005 without there being any order complying with Section 17-B of the Industrial Disputes Act, 1947. I submit that I am working as "Mazdoor" for the past 30 years in the petitioner company without any blemish and I am the only breadwinner of my entire family and if I am not employed anywhere, my entire family would be subjected to severe starvation and their lives would be at peril, depriving the legitimate source of eking out my livelihood, since myself and my entire family are reeling under abject poverty."

It is, thus, evident that while respondent No.2 made averment regarding his unemployment and starvation like condition of his family, the management of the appellant failed to establish his gainful employment. Therefore, the discretion exercised by the learned Single Judge to insist on compliance of Section 17-B as a condition for continuing the ad-interim order cannot be termed as arbitrary or unjust warranting interference under Clause 15 of the Letters Patent.

Section 17-B of the Act, which has bearing on the decision of this appeal, reads as under:

> " **17-B. Payment of full wages to workman pending proceedings in higher courts:-** Where in any case a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against

such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings, in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

In **Dena Bank v. Kiritikumar T. Patel**[2], the Supreme Court took cognizance of the objectives and reasons for enacting Section 17-B and observed:

" It would thus appear that the object underlying the enacting of the provisions contained in Section 17-B is to give relief to the workman in whose favour an award of reinstatement has been passed by the Labour Court and the said award is under challenge in the High Court or this Court. The said relief has been given with a view to relieve the hardship that would be caused to a workman on account of delay in implementation of the award as a result of the pendency of the proceedings in the High Court or this Court."

In **Ch. Saraiah v. Executive Engineer, Panchayat Raj Department**[3], the Supreme Court reversed the order passed by the Division Bench of the High Court which had set side the direction of the learned Single Judge for compliance of Section 17-B and observed as under:

" Having examined the provisions of Section 17-B of the Industrial Disputes Act, we are of the considered view that the court has no jurisdiction to direct non-compliance with the same when the condition precedent from passing an order in terms of

> Section 17-B of the Act is satisfied, and this being the legislative mandate, the Division Bench of the High Court committed serious error in interfering with the direction of the learned Single Judge."

In the context of the appellant's prayer for absolute stay, it is also apposite to mention that respondent No.2 had worked in the employment of the appellant for a period of 30 years and there was no tangible reason for his voluntary resignation, which had the effect of depriving him and his family of the only source of livelihood.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, W.A.M.P.No.1287 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

August 20, 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] (2005) 11 SCC 449

[2] (1999) 2 SCC 106

[3] (1999) 9 SCC 229